Response to the

Consultation on the Commission Report

on the enforcement of intellectual property rights

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Register of interest representatives number:16311905144-06

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About EDRI

European Digital Rights was founded in June 2002. Currently 28 privacy and civil rights organisations have EDRi membership. They are based or have offices in 18 different countries in Europe. Members of European Digital Rights have joined forces to defend civil rights in the information society.

Introduction

European Digital Rights (EDRi) welcomes the opportunity to comment on the Commission's Communication and Working Document on the application of Directive 2004/48/EC on enforcement of intellectual property rights. EDRi has always supported evidence-based decision-making and the development of an environment which protects fundamental rights and creates an open environment for creators and citizens alike.

At the outset, we have to say that it is regrettable that the Commission in its introduction says that "it is essential to find effective means of *enforcing* intellectual property rights" rather than "to find methods of *ensuring respect* for intellectual property rights". The Commission's choice of words suggests, intentionally or not, a repressive reflex that, following the failure of so many EU and national-level repressive measures, is disappointing, unwelcome and counter-productive.

EDRi would also like to express its surprise at the assertion in the Communication that the Directive was adopted without the Internet in mind. This statement is simply, demonstrably and obviously false, as demonstrated *inter alia* by the Commission's press release launching the Directive (IP/03/144), which made specific reference to the Internet.

Structure of this document

The first section (the credibility and legitimacy of intellectual property law) addresses a crucial question in relation to legislation which is subject to “ubiquitous” infringement - how and why is the law treated as illegitimate by so many citizens? In relation to enforcement of any widely disrespected laws, it is essential to ask this question, as legitimacy is never enforced, while illegitimacy is simply propagated by disproportionate repressive measures.

In the second section, we look at the issue of criminal sanctions, as this topic is briefly touched upon by the Commission's Implementation Report.

This leads in to the key question of access to information. This section introduces the core problems created by the apparently uncontrolled access to personal data promoted by the European Commission before the following section addresses the premises that the Commission uses to argue in favour of weakening the fundamental right to privacy in favour of intellectual property rights.

Access to information leads to the broader issue of injunctions and the flawed and counterproductive argumentation in the implementation report which supports the implementation of open-ended and preemptive obligations against Internet intermediaries. An example of such obligations is the demand made by Sabam (and supported by the Commission in the European Court of Justice case on this dispute)

that each Internet Access Provider be required "*for all its customers, in abstract and as a preventive measure, exclusively at the cost of that Internet service provider and for an unlimited period, a system for filtering all electronic communications, both ingoing and outgoing...*"[1]

The credibility and legitimacy of intellectual property law

The unauthorised filesharing of copyrighted material on the internet leads to copyright infringements on a significant scale - this much is clear. However, this is not a simple phenomenon, as proven from the consistent history of failure of repressive measures in this environment ever since the Internet started to grow as a prevalent part of society. Moreover, a lot of scientific research questions whether any harm is done by such infringements, or whether any harm that may be done warrants the existing repressive measures.

If the statistics produced by certain parts of the content industry are to be believed, a very large portion of the population views intellectual property law as so illegitimate that it may be willfully and repeatedly ignored. This raises a series of questions that have so far not been addressed or answered by the Commission or by individual member states.

How much actual harm is done by online IPR infringement?

According to a Dutch government sponsored economic survey by the TNO, SEO and IViR,[2] IPR infringement may lead to significant social benefits.

Furthermore, other research has found a correlation between non-infringing media consumption and online filesharing.[3]

An even more recent research project by the London School of Economics suggests that, while there is indeed a decline in music recording sales, the link with online infringement is weak at best.[4]

EDRi therefore contests the Commission's fundamental assumption that the current level of enforcement measures may fall short of what is needed. If anything, EDRi is of the opinion that major parts of the IPRED-directive do more harm than good, in that they propagate the illegitimacy of the law in the eyes of large numbers of citizens, and should therefore be rolled back.

What are the reasons for the illegitimacy of IPR legislation?

According to the IFPI Digital Music Report 2010[5] there were "less (sic) than 50" legal music services in 2003, a full eight years since the Internet emerged as a mass

1 ECJ Case C-70/10. Rapport d'audience available at http://www.mlex.com/itm/Attachments/2011-01-13_1B8G0W13A97M04RY/C70_10%20FR%20Hearing.pdf

2 Ups and downs: Economic and cultural effects of file sharing on music, film and games. See http://www.ivir.nl/publicaties/vaneijk/Ups_And_Downs_authorised_translation.pdf

3 Oberholzer-Gee, Felix and Strumpf, Koleman S., The Effect of File Sharing on Record Sales: An Empirical Analysis. Journal of Political Economy, Vol. 115, pp. 1-42, February 2007. Available at SSRN: http://ssrn.com/abstract=961830.

4 Creative Destruction and Copyright Protection: Regulatory Responses to File-sharing, http://www.scribd.com/doc/51217629/LSE-MPPbrief1-creative-destruction-and-copyright-protection.

5 http://www.ifpi.org/content/library/DMR2010.pdf

phenomenon. After 2003, the number of services increased, but so too did restrictions such as the Sony Rootkit, digital rights management software that prevents legally purchased music from being used in a flexible way and ongoing media attacks by the content industry against the very consumers that had been lost as a result of its inability to provide usable services during the first ten years of the Internet as a global phenomenon. Furthermore, prices fail to reflect the cost savings that could be expected from online delivery of content.

Still today, while the content industry speaks condescendingly of "educating" consumers to respect copyright, the opposite is happening. When, for example, a Belgian consumer tried to use Spotify, s/he is told that content available *for free* to others is not available to him/her. When s/he tries to access French or Dutch TV catch-up services, s/he is told that the content that is available *for free* to others is not available to him/her. As the Commission itself correctly points out that, to an as yet unspecified degree, "development of legal offers of digital content has been unable to keep up with demand". When considering the number of "legal offers" on the market, the geographic availability in the right format and at the right price are crucial factors that have so far not been analysed or assessed by the Commission - the simple availability of content in any format and at any price being sometimes used by the content industry as evidence of the market being adequately supplied.[6]

Similarly, consumers, who are generally paid once for whatever job that they do, lose a certain degree of sympathy for the content industry when, for example, they see in Belgium, royalty payments being introduced for (already paid for) music to be played in the workplace – resulting in either new business expenses at a time of economic crisis or their workplace falling silent. Similarly, with the British police complaining about not having enough resources to pay 100,000 UK pounds per year for access to ISP records[7] in order to gather evidence on child abuse and the country's police forces simultaneously paying 800,000 UK pounds in royalty payments for music played in the workplace,[8] sympathy for the music “industry” does not grow.

These considerations are very important in the context of repressive measures in relation to IPR enforcement. Will unauthorised collection of personal data in peer to peer networks, mass filtering of networks by ISPs and disproportionate punishments for trivial offences (in the absence of a workable definition of "commercial scale" or “counterfeit”) serve to exacerbate this problem or diminish it? The success of the Internet is its resilience and its ability to overcome restrictions. This resilience is also what stops repressive measures from achieving their goals.

Wholly failed measures, from the shutting down of Napster to the introduction of HADOPI in France, have clearly and consistently shown that repression produces three crucial effects:

- further alienation of citizens from the legal framework for intellectual property;
- collateral damage for fundamental rights;
- absolute failure to achieve the stated aims of the measures.

Finally on the issue of credibility of intellectual property, the European Commission

6 Ibid
7 http://www2.kedst.ac.uk/web/support/child%20protection/CEOP%20E-Bulletin%20Jan%20Feb%2009.pdf
8 http://www.telegraph.co.uk/culture/music/music-news/6677907/Police-spend-800000-a-year-on-music-rights.html

should consider bringing an end to legislative measures which unjustifiably[9] restrict society's access to its own culture. Two examples of this are term extension, where society at large loses access to its own culture, not to the benefit of creators, but to vested business interests. Similarly, the Commission is currently looking at the rules surrounding the publication of "orphan works". It remains to be seen whether this will support access of European society to its own culture or will be done in a way which will serve to lock culture away through the imposition of bureaucratic obligations that are so cumbersome that only large - and probably not European - businesses will be able to adhere to them. The purpose of intellectual property is meant to be the protection, promotion and propagation of culture, not locking it away.

Criminal law

The Working Document states that "counterfeiting and piracy appears (sic) to be increasingly linked to organised crime" and provides the 2009 Europol OCTA report as evidence to back up this statement. **The word "piracy" does not appear a single time in that report**. Such attempts to brand ordinary citizens as dangerous criminals will do little to enhance the credibility of intellectual property legislation.

In the interests of balance, credibility, evidence-based decision-making and proportionality, EDRi urges the Commission not to conflate issues as diverse as counterfeit medicines and unauthorised filesharing by ordinary consumers - and not to misuse evidence that one exists as proof that criminal measures are needed to fight against the other.

Misuse and misrepresentation of evidence is also clear from the introduction to the Report, where the Commission refers to "several studies" on the alleged costs of intellectual property infringements. However, it only refers to one, financed by the International Chamber of Commerce, whose methodology has been comprehensively proven to be unreliable.[10] Oddly, while referring to the unreferenced "several studies" showing huge costs from copyright infringements, the Commission also chooses not to mention several studies which suggest that the costs are actually far lower than presumed.[11]

Right of Information

The Working Document of the Commission makes some strange statements with regard to evidence-gathering in relation to online infringements. It is quite obvious that an easy to forge screenshot of an alleged infringement will not be accepted by courts without appropriate authentication. Societies based on the rule of law all have rules on minimum quality of evidence and there is no reason in this, or any other, policy area to abandon this approach. Technologies/services that provide/authenticate evidence-quality screenshots are available and the Commission is entirely within its rights to educate rightholders on how these work and where to find them. This would be a more appropriate activity than criticising and undermining legitimate procedural safeguards.

The document goes on to explain that vague references to data which may be under the control of an opposing party are rejected for being too vague by the courts. It is not obvious why the Commission blames the fact that the independent judiciaries of

9 See http://www.ivir.nl/news/Open_Letter_EC.pdf, for example

10 http://blogs.ssrc.org/datadrip/wp-content/uploads/2010/03/Piracy-and-Jobs-in-Europe-An-SSRC-Note-on-Methods.pdf

11 See footnotes 2, 3 and 4 above and http://www.hbs.edu/research/pdf/09-132.pdf and http://www.gao.gov/new.items/d10423.pdf

individual sovereign Member States assess requests from rightholders as being too vague rather than seeking to educate rightholders on how to properly formulate their requests.

While the Commission laments basic legal procedures being respected by Member States, it seems completely unconcerned about abuses of personal data by Member States. The Working Document raises the issue of banking, financial or commercial documents being made available even when there is no "commercial scale" involved or where no definition of commercial scale is defined. The analysis provided by the Commission suggests that the countries in question have put themselves in obvious breach of the Charter of Fundamental Rights and the European Convention on Human Rights in their attempts to implement the Directive - in that they are restricting the right to privacy for unquestionably disproportionate purposes. EDRi therefore encourages the Commission to act urgently in order to address this problem and ensure that this illegal behaviour be brought to an end as soon as possible – and to ensure that it is adequately respecting its own obligations under the Charter.

With regard to the availability of data, it is regrettable that the Commission felt able to make an assertion about data not being available without being willing (or able?) to indicate if this was perceived to be a problem in some Member States or in all Member States, the practical implications of this alleged lack of data, the types of data they are referring to, the age of the data they are referring to, etc. It is also worth pointing out that the Data Retention Directive, which only covers serious crime, is currently undergoing a review and its legality and proportionality have not been affirmed by any national constitutional court that has so far ruled on the issue.

The Working Document bemoans the fact that "restrictions imposed by privacy laws and the protection of personal data" prevent ISPs from working to police and punish their own consumers. It is very important that the Commission draw the necessary lessons from experience in Member States where this "restriction" is not imposed. The case of ACS:Law and Mediacat in the United Kingdom is particularly instructive in this context. Key elements of that case include:

- inadequate data security resulting in large amounts of data being published about consumers alleged to have illegally accessed pornographic material[12];
- large-scale "speculative invoicing," where ACS:Law threatened consumers with elevated court costs and penalties if they did not pay them a default level of penalty for an alleged infringement;
- abandonment of the case once the small group of consumers who refused to pay was due to come to court. This whole process was described by the judge in the case as follows: "I am not happy about this. I get the distinct impression that at every twist and turn there is a desire to avoid judicial scrutiny".[13] The solicitor responsible is now reportedly under investigation by the Solicitors Regulatory Authority.

Bemoaning the existence of legal protection for personal data the Commission argues in its working document that “the situation is even more complicated if the request for information is made before the start of judicial proceedings.” However, the complexities created by not protecting personal data and handing them over before the start of judicial proceedings are very clearly illustrated by the example of ACS:Law/Medicat in

12 http://www.bbc.co.uk/news/technology-11434809
13 http://www.guardian.co.uk/technology/2011/jan/25/acslaw-ceases-filesharing-claims

the UK. As the European Court of Human Rights notes, it is necessary “to ensure that powers to control, prevent and investigate crime are exercised in a manner which fully respects the due process and other guarantees which legitimately place restraints on crime investigation and bringing offenders to justice, including the guarantees contained in Articles 8 and 10 of the Convention, guarantees which offenders themselves can rely on.”[14]

In the context of data processing for enforcement purposes, IP address data is unequivocally "personal data" in the context of the 1995 Data Protection Directive. This is made clear in Recital 26, which explains that "to determine whether a person is identifiable, account should be taken of all the means likely reasonably to be used either by the controller or by any other person to identify the said person."

As a result, it is quite clear that personal data should only be communicated from Internet intermediaries to law enforcement authorities on the basis of legal orders.

"Conflicts between the right of information and the right to privacy"

The Report argues that there is a "balance" to be struck between intellectual property and the fundamental right to privacy. It furthermore uses the Telefonica/Promusicae[15] case to back up this assertion.

The Commission's analysis is flawed on a number of fronts:

1. "Balancing of rights" as a general concept

It is not possible in a general way to say that certain rights should be increased or decreased compared with others - this can only logically be decided by a court on a case-by-case basis, as is already the situation (as explained by the Court in the Telefonica/Promusicae case). This balance is struck every time a search warrant is issued or denied and every time a suspect's right to privacy is deemed to be adequately shown to be outweighed by the evidence available. Consequently, it is neither appropriate, logical nor even possible to "rebalance" rights in either this instrument or in the review of the 1995 Data Protection Directive.

2. Equality of rights

Much of the intellectual property discussed in the Internet environment refers to cultural goods. Being part of the cultural *heritage* of a society brings with it certain obligations as well as rights. This principle is clearly illustrated in Article 2 of the UNESCO Convention on Protection and Promotion of the Diversity of Cultural Expressions, which has been signed and/or ratified by almost every Member State of the Union, while the European Community itself acceded to the Convention in December 2006. This Convention states that "cultural diversity can be protected and promoted ***only*** if human rights and fundamental freedoms, such as freedom of expression, information and communication, as well as the ability of individuals to choose cultural expressions, are ***guaranteed***." This is the “balance” that the EU has bound itself to respect under international law.

14 K.U. v. Finland (Application no. 2872/02) 2 December 2008

15 Judgment of the Court (Grand Chamber) of 29 January 2008, Case C-275/06, Productores de Música de España (Promusicae) v. Telefónica de España SAU (Telefónica)

3. The Telefonica/Promusicae case

At no point in the Telefonica/Promusicae judgement is there an assertion from the European Court of Justice that there is any imbalance in any Member State of the Union between the right to property and the right to privacy. The Court simply made a statement of legal fact that, in any case, an appropriate balance needs to be found. It behooves the Commission not to attribute meanings to ECJ rulings which are not there. Furthermore, the Commission should avoid making broad, unspecific and unsubstantiated accusations about unnamed Member States. For example where it refers to "those Member States where privacy laws currently prevail over the right to (intellectual) property". To our knowledge, no Member State has been subject to any ruling which says that this is the case nor has the European Commission itself ever made an explicit accusation against any one Member State.

Injunctive relief

The issue of injunctions is a particularly dangerous one, particularly as it risks undermining the spirit, if not the letter, of existing European legislation, including the Charter of Fundamental Rights. Moreover, the current practice of so called ex parte injunctions has already proven to cause excessive collateral damage. Two examples from the Netherlands illustrate this.

The first case is the so-called HISWA-case. HISWA organises the largest trade shows for the yacht-building industry in the Benelux countries. Yacht-builders depend for over 80% of their annual turnover on orders placed during or after this trade show. A relatively large yacht-builder, Hoekstra holds a series of brand names containing the word 'Friendship'. Friendship Yacht Company, a US importer of a New Zealand built yachts, intended to promote its yachts at the HISWA trade show between the 2nd and 6th of September 2008. On the 2nd of September 2008, Hoekstra requested an ex parte injunction against both Friendship Yacht Company and HISWA (as organiser of the trade show) and granted on the same day by the Court of Amsterdam, but only against the Friendship Yacht Company. The net result was that Friendship Yacht Company was effectively denied any turnover in the Benelux yachting market for at least a year, based on a questionable trademark dispute.

The second case is the Darfurnica case. The Dutch artist Nadia Plesner had among other works created a painting depicting various actors and events in the Darfur genocide. An element of the painting is an African child holding a bag that shows a certain resemblance to a Louis Vuitton bag. Louis Vuitton Malletier S.A. requested an ex parte injunction against Nadia Plesner from the Court of The Hague, which was subsequently granted. This was granted despite the fact that the supposed infringement of a protected design through its depiction on a painting would not pose any immediate harm to Louis Vuitton's capability to market and sell its bags while the ex parte injunction to prevent Nadia Plesner from offering the painting for sale is a clear impediment to the freedom of expression.

These two cases are not isolated incidents, but part of a much wider pattern of abuse of ex parte injunctive relief by rightsholders. Consequently IPRED has so far proven to be harmful to fundamental rights, cultural and technological progress as well as economic activity in the EU.

Undermining the E-Commerce Directive

The E-Commerce Directive grants Internet intermediaries a range of "safe harbours" from liability for illegal content, on condition that they act in a way which is diligent and responsible. This approach was adopted for a variety of reasons including:

– in order to ensure that enforcement of all laws happen as close as possible to the edge of the network i.e. where the infringement actually happens;
– in order to ensure that the openness of the Internet, on which the fundamental rights and economic value depends, is not damaged or destroyed through interference by vested interests.

The Commission's reference to the separation of injunctions from liability is an overt attempt to undermine and circumvent the spirit, aims and purpose of Articles 12 to 15 of the E-Commerce Directive. This would be achieved by injunctions being applied to impose exactly the kinds of restrictions explicitly excluded by the E-Commerce Directive. This is proven *inter alia* by the evidence provided by the European Commission in the Scarlet/Sabam case, where the Commission explicitly lobbied for widescale filtering of peer to peer content, restricted not only to material that rightsholders could show ownership of, but even what rightsholders would claim to own[16] and for an unlimited period of time

Single market impact of the use of injunctions as a repressive measure

National courts, depending on, among other things, the perceived value of the fundamental right of communication, the ease of implementation of particular injunctions, etc, are likely to have varying interpretations of what should be done in such cases. A lower court might simply ask whether the basic criteria for imposing an injunction are met, while higher courts may or may not take wider issues into account, such as the legal obligations of that state with regard to the Charter of Fundamental Rights and the European Convention on Human Rights.

It is almost guaranteed that the legal systems of different Member States will assess in widely differing ways the alleged necessity and proportionality of, for example, contravening Articles 7, 8 and 11 of the Charter and Articles 8 and 10 of the Convention through the imposition on ISPs of a general obligation to monitor/filter uploads and/or, for example to avoid specific files from being made available or accessed.

As a result, any such encouragement to implement injunctions which undermine fundamental rights, as well as existing principles of EU law on Internet regulation, are very likely to result in the creation, rather than the removal, of barriers to the single market, thereby contravening the Treaty Article from which the Directive gains its legal basis. It is imperative this this serious error be avoided through a clarification from the European Commission stating that injunctions should only be imposed in enumerated and restricted circumstances. As the Commission itself says in the Communication, "disparities between the Member States' systems for enforcing intellectual property rights undermine the proper functioning of the internal market and weaken the enforcement of the substantive law on such rights".

16 "[...]sur laquelle le demandeur *prétend* détenir des droits" http://www.mlex.com/itm/Attachments/2011-01-13_1B8G0W13A97M04RY/C70_10%20FR%20Hearing.pdf

Effectiveness of injunctions

We are curious about the assertion of the Commission that "injunctions have also been successfully used towards intermediaries to block access to sites which facilitate works protected by copyright or related right (sic) without the consent of the rightholder." It cites, as justification for this statement, blocking measures imposed in Denmark. Ironically, in one of these cases, the blocked site indicated a significant surge in traffic from Danish IP addresses, subsequent to the alleged "block" being put in place (http://arstechnica.com/tech-policy/news/2008/02/pirate-bay-to-ifpi-danish-ban-has-led-to-even-more-traffic.ars). It is therefore difficult to assess what the Commission understands by "effective" in this context. It is also difficult to assess how this blocking could be "necessary in a democratic society" as required by Article 10 of the ECHR, particularly when there is no evidence that this measure has led to a perceptible difference in levels of infringement in Denmark.

We are also curious as to why the Commission omitted to mention, in relation to the Scarlet/Sabam case, that it actively supported in Court the Sabam demand that an ISP "for all its customers, in abstract and as a preventive measure, exclusively at the cost of that Internet service provider and for an unlimited period, a system for filtering all electronic communications, both ingoing and outgoing..." The Commission's argumentation on this point is instructive regarding the degree of repression it sees as acceptable in the context of the implementation of the Directive. This position also appears to confirm the suspicion that the Commission is seeking to circumvent the E-Commerce Directive, Article 15 in particular.

Impact assessment

It follows from all of the above that certain elements will be essential in any future impact assessment that will be used as a justification for the Commission's existing intention to redraft this legislative instrument, particularly as the Commission itself readily admits that the feedback that it has received from Member States has been limited due to late implementation.

Possibly as a result of this lack of data, the Commission has failed to respect its legal obligation under Article 18 of the Directive to undertake an evaluation of the Directive's "impact on innovation and the development of the information society." The impact on innovation is particularly important as failure to innovate and develop new services is likely to be facilitated and encouraged by enforcement measures which seek to maintain, or which have the effect of maintaining, the status quo.

Bearing in mind the fundamental rights, cultural and economic interests at stake, it is important that the Commission improve its consistency in this policy area, as well as generally with regard to online regulation. It is bordering on the absurd that the Commission believes that it did not think about the Internet when passing the 2004 IPR Enforcement Directive, yet believes that it adopted the 2001 Copyright in the Information Society in a way which was perfectly designed for the demands of the digital economy in 2011. Similarly, it is unacceptable that the Commission feels that it is necessary to thoroughly assess Directive 2000/31/EC, while the IPR Enforcement Directive is apparently so trivial that the Commission can both adopt an implementation report, which it recognises as incomplete, *and* avoid undertaking similar thorough analysis.

An impact assessment developed with even a minimal level of diligence would require examination of the following points:

- The reasons behind the apparent collapse in legitimacy of intellectual property law in the eyes of citizens, which has caused what the Commission described in the working document as "ubiquitous" infringements.

- The effect of repressive measures undertaken in individual Member States, such as HADOPI in France, described by the French Union of Independent Phonographic Producers[17] as having achieved no perceptible improvement in the French music market since its inception.

- The damage caused to the single market and the availability of innovative services by the restrictive and inflexible approach to exceptions and limitations laid down in Directive 2001/29/EC, which is partly at fault for the level of infringements, as well as being a brake on European innovation.

- The impact on fundamental rights of each measure. This should be done by following the Fundamental Rights Checklist detailed in Commission Communication COM (2010) 573/4 for each option assessed.

- The wider impact on the innovative nature of the Internet that would result from measures that require ISPs to undermine the open and neutral nature of the Internet, as well as the direct costs that private network providers would incur to implement unproven policing measures deployed in an attempt to protect the economic interests of other private economic operators.

Conclusion

European Digital Rights believes that:

- a thorough assessment of the failures of legitimacy of online intellectual property legislation is necessary before any credible new legislative or non-legislative measure on intellectual property enforcement can be proposed;

- repression, such as HADOPI, has created significant "collateral damage" for both fundamental rights and the credibility of European defence of fundamental rights (as shown by France now being the first European country on the "countries under surveillance" list of Reporters without Borders[18]). For practical (they risk further undermining the credibility of the legal framework) and legal (the Commission's legal obligations to respect the Charter) reasons, support for further repressive measures (either directly or via support for injunctive measures) should be avoided;

- facile statements regarding "rebalancing" of rights and imbalance must be avoided in the interest of ensuring credible and meaningful policy development;

- it is important to avoid conflating entirely different phenomena, such as

17 http://www.leparisien.fr/flash-actualite-culture/musique-les-producteurs-independants-veulent-debattre-de-mesures-de-soutien-18-01-2011-1232806.php

18 http://en.rsf.org/surveillance-france,39715.html

manufacture and distribution of counterfeit medicines and small-scale private downloading of unauthorised music files. It follows from this that effective, logical and proportionate definitions of "commercial scale" and “counterfeit” be found to ensure that any future proposal on criminal sanctions does not cover trivial infringements;

– personal data should not be communicated except under judicial order and only to enforcement authorities. Otherwise, techniques seen in some countries that more closely resemble a "wild west" protection racket than law enforcement in a modern society based on the rule of law, are likely to multiply;

– in the interests of all of the interests at stake, a full impact assessment looking at all of these issues and explicitly respecting the Commission's own "fundamental rights checklist" is essential before any new proposal is made.